

NOV 17 2008

**Board of Vocational Nursing
and Psychiatric Technicians**

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9 **BEFORE THE**
DEPARTMENT OF CONSUMER AFFAIRS
10 **FOR THE BUREAU OF VOCATIONAL NURSING & PSYCHIATRIC TECHNICIANS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. VN-2006-1582

13 DANIEL SEAN HARPER
749 Apache Trail
14 Riverside, CA 92507

A C C U S A T I O N

15 Vocational Nurse License No. VN 172031

16 Respondent.

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18 Complainant alleges:

19 **PARTIES**

20 1. Teresa Bello-Jones, J.D., M.S.N., R.N. (Complainant) brings this
21 Accusation solely in her official capacity as the Executive Officer of the Bureau of Vocational
22 Nursing and Psychiatric Technicians, Department of Consumer Affairs.

23 2. On or about April 28, 1995, the Bureau of Vocational Nursing and
24 Psychiatric Technicians issued Vocational Nurse License Number VN 172031 to Daniel Sean
25 Harper (Respondent). The Vocational Nurse License was in full force and effect at all times
26 relevant to the charges brought herein and will expire on November 30, 2008, unless renewed.

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1 7. Section 2878.8 of the Code states:

2 The board may deny any application or may suspend or revoke any license
3 issued under this chapter [the Vocational Nursing Practice Act] based upon the
4 denial of licensure, suspension, restriction, or other disciplinary action of a
5 license by another state, any other government agency, or by another California
6 health care professional licensing board. A certified copy of the finding shall be
7 conclusive evidence of that action provided that, if from another state, the
8 findings establish an act which if committed in California would be grounds for
9 discipline.

10 8. Section 490 of the Code provides, in pertinent part, that a board may
11 suspend or revoke a license on the ground that the licensee has been convicted of a crime
12 substantially related to the qualifications, functions, or duties of the business or profession for
13 which the license was issued.

14 9. Section 493 of the Code states:

15 Notwithstanding any other provision of law, in a proceeding conducted by
16 a board within the department pursuant to law to deny an application for a license
17 or to suspend or revoke a license or otherwise take disciplinary action against a
18 person who holds a license, upon the ground that the applicant or the licensee has
19 been convicted of a crime substantially related to the qualifications, functions,
20 and duties of the licensee in question, the record of conviction of the crime shall
21 be conclusive evidence of the fact that the conviction occurred, but only of that
22 fact, and the board may inquire into the circumstances surrounding the
23 commission of the crime in order to fix the degree of discipline or to determine if
24 the conviction is substantially related to the qualifications, functions, and duties
25 of the licensee in question.

26 As used in this section, "license" includes "certificate," "permit,"
27 "authority," and "registration."

28 10. California Code of Regulations, title 16, section 2521, states:

 For the purposes of denial, suspension, or revocation of a license pursuant
 to Division 1.5 (commencing with Section 475) of the Business and Professions
 Code, a crime or act shall be considered to be substantially related to the
 qualifications, functions or duties of a licensed vocational nurse if to a substantial
 degree it evidences present or potential unfitness of a licensed vocational nurse to
 perform the functions authorized by his license in a manner consistent with the
 public health, safety, or welfare. Such crimes or acts shall include but not be
 limited to those involving the following:

 (a) Procuring a license by fraud, misrepresentation, or mistake.

 (b) A conviction of practicing medicine without a license in violation of
 Chapter 5 of Division 2 of the Business and Professions Code.

1 (c) Violating or attempting to violate, directly or indirectly, or assisting in
2 or abetting the violation of, or conspiring to violate any provision or term of
Chapter 6.5, Division 2 of the Business and Professions Code.

3 (d) Aiding or assisting, or agreeing to aid or assist any person or persons,
4 whether a licensed physician or not, in the performance of or arranging for a
violation of any of the provisions of Article 13, Chapter 5, Division 2 of the
5 Business and Professions Code.

6 (e) Conviction of a crime involving fiscal dishonesty.

7 (f) Any crime or act involving the sale, gift, administration, or furnishing
8 of "narcotics or dangerous drugs or dangerous devices" as defined in Section
4022 of the Business and Professions Code.

9 11. California Code of Regulations, Title 16, section 2522.5 states:

10 (a) When considering the suspension or revocation of a license on the
11 ground that a licensed vocational nurse has been convicted of a crime, the Board,
in evaluating the rehabilitation of such person and his eligibility for a license will
12 consider the following criteria:

13 (1) Nature and severity of the act(s) or offense(s).

14 (2) Total criminal record.

15 (3) The time that has elapsed since commission of the act(s) or
offense(s).

16 (4) Whether the licensee has complied with any terms of parole,
17 probation, restitution, or any other sanctions lawfully imposed
against the licensee.

18 (5) If applicable, evidence of expungement proceedings
pursuant to Section 1203.4 of the Penal Code.

19 (6) Evidence, if any, of rehabilitation submitted by the
20 licensee.

21 12. Section 125.3 of the Code provides, in pertinent part, that the Board may
22 request the administrative law judge to direct a licensee found to have committed a violation or
23 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
24 and enforcement of the case.

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1 **FIRST CAUSE FOR DISCIPLINE**

2 **(September 29, 2004 Criminal Conviction for Caretaker Embezzlement From an Elder)**

3 13. Respondent has subjected his license to disciplinary action under sections
4 490 and 2878, subdivision (f) of the Code in that Respondent was convicted of a crime that is
5 substantially related to the qualifications, functions, and duties of a licensed vocational nurse.
6 The circumstances are as follows:

7 a. On or about September 29, 2004, in a criminal proceeding entitled
8 *People of the State of California v. Daniel Sean Harper*, in Riverside County Superior Court,
9 case number SWF009240, Respondent was convicted on his plea of guilty of violating Penal
10 Code section 368, subdivision (e), embezzlement from an elder by a caretaker, a misdemeanor.

11 b. As a result of the conviction, on or about September 29, 2004,
12 Respondent was sentenced to 60 days in the custody of the sheriff, with credit for two days, to be
13 served on the RSO Weekender program, 36 months summary probation, Fourth Amendment
14 waiver, and payment of \$320 in fees, fines, and restitution. Respondent was further ordered not
15 to have any negative contact with his victim. Following numerous probation violation hearings
16 on Respondent's failure to complete Weekender Program custody, on or about February 1, 2008,
17 Respondent's probation was reinstated and modified, adding an additional 30 days to custody
18 time, for a total of 95 days. Respondent was given credit for 21 days. Probation is currently set
19 to expire on or about November 18, 2009.

20 c. The facts that led to the conviction were that on or about August 6,
21 2004, the Hemet Police Department responded to a convalescent hospital. An elderly man, L.P.,
22 told the officer that he last recalled seeing his ATM card sometime around June 28, 2004. On
23 that date, while watering his lawn, he fell down and broke his shoulder. He was transported to a
24 local hospital, and then transferred to the convalescent hospital on or about July 1, 2004. He did
25 not have constant control of his wallet at either hospital. L.P. provided the officer with a bank
26 statement showing 16 unauthorized cash withdrawals. L.P. stated he did not give anyone his
27 PIN and did not know who conducted the transactions.

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1 d. In a follow-up investigation, a Hemet Police Department detective
2 learned that during the time L.P. was a patient at the convalescent hospital, there were 37
3 unauthorized ATM withdrawals totaling \$3,565.88. Based on the locations of the ATM
4 withdrawals, the detective contacted one of the banks and obtained security videotapes that
5 recorded the transactions. The detective obtained four still photos of the suspect (Respondent),
6 from four different dates, each time using the stolen ATM card. The detective noted the in the
7 photos that the suspect (Respondent) was wearing scrubs or a nursing uniform. The detective
8 went to the location where L.P. was hospitalized and saw a man in the hallway who resembled
9 the suspect. The detective confirmed with the hospital administrator that the man in the photo
10 was Respondent, who was a charge nurse at the hospital. Respondent was interviewed in the
11 administrator's office and admitted he was the person in the photographs, and that he made the
12 unauthorized withdrawals from L.P.'s account. Respondent said he was able to use the ATM
13 card because L.P. had the PIN in his wallet. Respondent was arrested on charges of elder
14 financial abuse, burglary, and theft.

15 **SECOND CAUSE FOR DISCIPLINE**

16 **(Unprofessional Conduct - Commission of Dishonest Acts)**

17 14. Respondent has subjected his license to disciplinary action under section
18 2878, subdivision (j) of the Code, in conjunction with California Code of Regulations, title 16,
19 section 2521, subdivision (e), in that Respondent was convicted of victimizing an elderly patient
20 by stealing his ATM card and making unauthorized withdrawals totaling \$3,565.88, as detailed
21 in paragraph 13, above. Such a crime of moral turpitude resulted in actual harm to a patient
22 under his care and constitutes unprofessional conduct.

23 **THIRD CAUSE FOR DISCIPLINE**

24 **(February 1, 2008 Criminal Conviction for Stalking)**

25 15. Respondent has subjected his license to disciplinary action under sections
26 490 and 2878, subdivision (f) of the Code in that Respondent was convicted of a crime that is
27 substantially related to the qualifications, functions, and duties of a licensed vocational nurse.
28 The circumstances are as follows:

1 a. On or about February 1, 2008, in a criminal proceeding entitled
2 *People of the State of California v. Daniel Sean Harper*, in Riverside County Superior Court,
3 case number SWF020499, Respondent was convicted on his plea of guilty of violating Penal
4 Code section 646.9, subdivision (a), stalking, reduced to a misdemeanor pursuant to Penal Code
5 section 17, subdivision (b)(4).

6 b. As a result of the conviction, on or about February 1, 2008,
7 Respondent was sentenced to 180 days in the custody of the sheriff, with credit for two days, to
8 be served on the RSO Weekender program, 36 months summary probation, and payment of \$510
9 in fees and fines. The court ordered restitution to the victim in an undetermined amount.
10 Respondent was further ordered to perform 20 hours of community service, submit to a Fourth
11 Amendment Waiver, enroll in and complete a 52-week Domestic Violence Program, participate
12 and complete a counseling or rehabilitation/treatment program, and not to have any negative
13 contact with his victim.

14 c. The facts that led to the conviction were that on or about February
15 14, 2007, Respondent's estranged wife, J.H., reported to the lobby of the Hemet Police
16 Department. J.H. told the officer that she moved out the home she shared with Respondent the
17 previous November because of his drug use. J.H. reported that Respondent had been stalking
18 her; he had been sitting in his car outside her work, following her in his vehicle, and constantly
19 calling her telephone at all hours of the day and night. On her way to the police station,
20 Respondent had followed her vehicle very closely, speeding up then slamming on his brakes at
21 the last minute. Respondent pulled alongside her vehicle and yelled threats. J.H. had her
22 daughter and infant granddaughter in her vehicle at the time and was very scared.

23 d. The following day, on or about February 15, 2007, officers
24 responded to a disturbance outside of the Hemet Police Department involving J.H. and
25 Respondent. J.H. told officers that she decided to obtain a restraining order against Respondent.
26 On her way to the police department, as J.H. sat in her vehicle at a stoplight, Respondent
27 suddenly appeared at her driver's side window and started pounding on it and yelling. Scared,
28 J.H. drove off when the light turned green. She called 9-1-1 on her cell phone as she drove to

1 the police department. When J.H. arrived, she discovered that Respondent had followed her
2 there and started to follow her down the sidewalk to the front door of the police station. Passers-
3 by flagged down officers who arrested Respondent for stalking. J.H. reported that in the time
4 since her last report, Respondent had called her at least 30 times, and had also called her friends.
5 J.H. stated that she was very afraid of what Respondent might do.

6 **FOURTH CAUSE FOR DISCIPLINE**

7 **(Unprofessional Conduct - Making a False Statement 8 in Connection with the Application for Issuance of a License)**

9 16. Respondent has subjected his license to disciplinary action under section
10 2878, subdivisions (e) and (j) of the Code, in conjunction with California Code of Regulations,
11 title 16, section 2521, subdivision (a), in that on or about October 13, 2004, in Respondent's
12 renewal application for a vocational nurse license, Respondent was asked "Since you last
13 renewed your license, have you been convicted of or pled nolo contendere to any violation of
14 any law of any state in the United States or a foreign country?" In response to the question,
15 which is clear and unambiguous in its language, Respondent checked Box G ("NO").
16 Respondent further signed the application, swearing under penalty of perjury that the
17 information contained in the application was true and correct. Two weeks earlier, on or about
18 September 29, 2004, Respondent pled guilty to and was convicted of violating Penal Code
19 section 368, subdivision (e), embezzlement from an elder by a caretaker, in Riverside Superior
20 Court, as detailed in paragraph 13, above. Respondent procured a vocational nurse license by
21 fraud and deceit, which constitutes unprofessional conduct.

22 **DISCIPLINARY CONSIDERATIONS**

23 17. To determine the degree of discipline, if any, to be imposed on
24 Respondent, Complainant alleges that on or about December 8, 1998, in a prior administrative
25 proceeding before the Board of Vocational Nurse and Psychiatric Examiners, entitled *In the*
26 *Matter of the Accusation Against Daniel Sean Harper*, Office of Administrative Hearings case
27 number 1998030164, Respondent's vocational nurse license was revoked, revocation was
28 stayed, and Respondent was placed on three years probation on standard terms and conditions.

1 As a condition precedent to the stay of revocation, Respondent was ordered to appear before the
2 Oklahoma Board of Nursing and dispose of the temporary license suspension issued on March
3 26, 1997, for failing to appear at an order to show cause hearing. The Accusation alleged that
4 Respondent subjected his license to discipline under section 2878, subdivision (a) of the Code in
5 that on or about December 13, 1996, the Oklahoma Board of Nursing ordered Respondent's
6 license be placed on two years probation for his conviction for methamphetamine possession, for
7 which he received a five-year deferred entry of judgment from the Oklahoma courts.

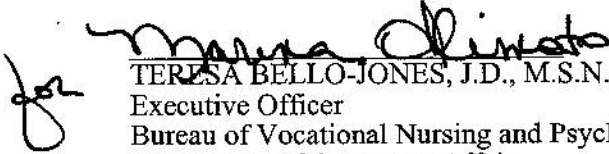
8 18. In a letter from the Bureau, dated November 14, 2002, Respondent was
9 informed that his probation was completed on November 3, 2002. Respondent was further
10 informed that he was responsible for obeying all laws set forth in the Vocational Nursing
11 Practice Act; that it was critical his patients, employers, and coworkers were able to trust him to
12 use good judgment in every situation, that he operate within his scope of practice, and that he be
13 honest and ethical at all times.

14 PRAYER

15 WHEREFORE, Complainant requests that a hearing be held on the matters herein
16 alleged, and that following the hearing, the Director of Consumer Affairs issue a decision:

- 17 1. Revoking or suspending Vocational Nurse License Number VN 172031,
18 issued to Daniel Sean Harper;
19 2. Ordering Daniel Sean Harper to pay the Bureau of Vocational Nursing and
20 Psychiatric Technicians the reasonable costs of the investigation and enforcement of this case,
21 pursuant to Business and Professions Code section 125.3;
22 3. Taking such other and further action as deemed necessary and proper.

23 DATED: November 17, 2008

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25 
26 TERESA BELLO-JONES, J.D., M.S.N., R.N.
27 Executive Officer
28 Bureau of Vocational Nursing and Psychiatric Technicians
Department of Consumer Affairs
State of California
Complainant

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